

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 4, 2014 at 1:30 p.m.

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1. [12-36018](#)-E-13 IMELDA/ANTONIO BAUTISTA MOTION FOR RELIEF FROM
GAR-1 Jennifer B. Reichhoff AUTOMATIC STAY
1-31-14 [[113](#)]
NATIONSTAR MORTGAGE, LLC VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 31, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Final Ruling: No appearance at the March 4, 2014 hearing is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Nationstar Mortgage, LLC, ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 216 Wildflower Dr., Roseville, California (the "Property"). Movant has provided the Declaration of Gabriel Montoya to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Chapter 13 Trustee filed a statement on non-opposition.

The Debtor also filed a non-opposition to the Motion for Relief from the Stay. Dckt. 122.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$438,007.94, secured by Movant's first deed of trust, as

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stated in the Montoya Declaration and Schedule D filed by Imelda and Antonio Bautista ("Debtors"). The value of the Property is determined to be \$250,000.00, as stated in Schedules A and D filed by Debtors.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the property for either the Debtor or the Estate, and the property is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Nationstar Mortgage, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Nationstar Mortgage, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 216 Wildflower Dr., Roseville, California.

No other or additional relief is granted.

2. [09-46360](#)-E-13 MARGUERITE GALVEZ
[13-2313](#)
GALVEZ V. WELLS FARGO BANK,
N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-9-13 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: David M. Newman; Matthew J. Pero

Adv. Filed: 10/9/13
Answer: 1/6/14

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)
Notes:

Continued from 2/19/14. (Specially set for the court's Chapter 13 Relief
From Stay Calendar.) The parties advised the court that a possible amended
complaint may be filed and the Defendant needs to amend the answer to
address the jurisdiction issues.